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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1949 - - - - - Number 419

PLANKINTON PACKING COMPANY,

Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, WILLIAM STOKES, and LOCAL #50, UNITED PACKING HOUSE WORKERS OF AMERICA, C.I.O.,

Respondents.

WISCONSIN EMPLOYMENT RELATIONS BOARD,

Respondent,

vs.

THE PLANKINTON PACKING COMPANY, Petitioner, and UNITED PACKING HOUSE WORKERS OF AMERICA, C.I.O., Local #50.

Brief of William Stokes in Opposition to Petition for Certiorari.

DAVID BEZNOR,
LEE K. BEZNOR,
Attorneys for William Stokes.

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DECISION OF THE COURT BELOW.

The petition for writ of certiorari seeks review of a decision of the Supreme Court of the State of Wisconsin reported in 255 Wis. 285, 38 N. W. (2nd) 688.

QUESTION PRESENTED.

The presentation of the question by the petitioner (page 8, Petition for Writ) does not properly represent the issue here involved.

The single question is whether the state board had authority to enter an order against an employer subject to the National Labor Relations Board which had interfered with the right of William Stokes to refrain from membership in the respondent union and had discharged him from his employment.

ARGUMENT.

THE WISCONSIN EMPLOYMENT RELATIONS BOARD HAD AUTHORITY TO ENTER AN ORDER AGAINST AN EMPLOYER SUBJECT TO THE NATIONAL LABOR RELATIONS BOARD WHICH HAD INTERFERED WITH THE RIGHT OF WILLIAM STOKES TO REFRAIN FROM MEMBERSHIP IN THE RESPONDENT UNION AND WAS DISCHARGED FROM HIS EMPLOYMENT.

Many of the cases dealing with the relationship between the state labor acts and the National Labor Relations Act had their genesis in Wisconsin. 1/

1/ Allen-Bradley Local No. 1111 vs. Board, 315 U. S. 470; International Brotherhood vs. Wisconsin Employment Relations Board, 336 U. S. 245; Algoma P. & V. Co. vs. Wisconsin Employment Relations Board, 336 U. S. 301; LaCrosse Telephone Corp. vs. Wisconsin Employment Relations Board, 336 U. S. 18.

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The quintessence of these cases is that a state may impose regulation more restrictive than that prescribed by the federal law either in prohibition or regulation of union-shop agreements.

This Court upheld the order of the Wisconsin state board in the *Algoma* case (336 U. S. 301) on substantially the identical facts which are involved here:

1. Petitioner challenged the validity of Sections 111.04, 111.06(1)(a) and (c) of Wisconsin Statutes.
2. Employer engaged in interstate commerce.
3. Labor organization in which employer sought to encourage membership was certified as bargaining agent by National Labor Relations Board.
4. Employer entered into contract with designated union requiring maintenance of membership as a condition of employment.
5. Employee discharged for not belonging to particular labor organization.

The Petitioner seeks to distinguish the cases by asserting that "the instant case does not involve the discharge of an employee pursuant to any 'union security' agreement" (page 14, Petitioner's brief).

This Court recognized in the *Algoma* case that the Wisconsin Act is not a mere *prohibition* of a closed shop but *regulates* the encouragement of union membership more stringent than that prescribed by the federal government. And that a discharge may not be made under the State law to encourage membership in a union.

Neither this Court nor the state law sought to pivot the regulatory power of the state upon the existence or absence of a union-shop agreement.

And the Supreme Court of the State of Wisconsin recognized the applicability of these decisions when it considered the instant case *(in Wisconsin Employment Relations Board vs. Plankinton Packing Company,* 255 Wis. 285, 293) by pointing out that:

> "Every argument made by the company and the union in support of their contention that the state board was without jurisdiction is answered adversely to them by the opinion of this court in *Wisconsin Employment Relations Board vs. Algoma P. & V. Co.* (1948), 252 Wis. 549, 32 N. W. (2d) 417, affirmed (1949) 336 U. S. 301, 69 Sup. Ct. 584, 93 L. Ed. 000. No useful purpose would be served by reiterating here what was so well said there."

Respectfully submitted,

DAVID BEZNOR,
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Attorneys for William Stokes.